IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 521 OF 2006

Kanishka T. Kamble ... Petitioner

Versus

The Rajiv Gandhi Institute of Technology and Ors. ... Respondents

Mr. S.M. Dighe, instructed by Mr. S.D.Rupwate for the petitioner.
Mr. A.L. Gore for respondent No.1.
Mr. R.A. Rodrigues for respondent No.3.
Mr. R.M. Sawant, Government Pleader, for respondent Nos. 5 and 6.

CORAM: **KSHITIJ R. VYAS, C.J.** &
S.C. DHARMADHIKARI, J.

DATE: **MARCH 03, 2006**.

P.C.

The petitioner, who is a Scheduled Caste candidate, appeared MHT-CET 2005 examination conducted by the Director of Technical Education and secured 57% marks in Physics,Chemistry and Mathematics (PCM). The petitioner has passed H.S.C. in October, 2004 in two attempts securing 54% marks in aggregate and 41.6% (125/300) marks in PCM. The petitioner got admission in the Rajiv Gandhi Institute of Technology, respondent No.1 herein, on 10th August, 2005. It appears that subsequently while scrutinising the forms it was noticed that his PCM score is less than 45% and his admission was

subsequently cancelled by a communication dated 19th September, 2005. The petitioner applied to the College by his representation dated 7th January, 2005 pointing out the directions of the Apex Court in the case of *T.M.A. Pai Foundation and others* vs. *State of Karnataka and ors.* It appears that the College authorities sought advice from the Director of Technical Education. On failure to get response to the said representation, immediately the petitioner approached this Court with a prayer to quash and set aside the order dated 19th September, 2005 of cancellation of admission to First Year of the Four Years Degree Course of Engineering (Electronics) issued by respondent No.1. A direction was also sought that respondent No.1 be directed to permit the petitioner to continue as an admitted student of the said course and permit him to appear for Semester-1 examination to be held from 7th December, 2005 by issuing him the seat number and the hall ticket.

2. A Division Bench of this Court by its order dated 6th December, 2005, permitted the petitioner to appear for the examination of the first semester of the first year of the Four year Degree Course of Engineering course, provisionally. Respondent No.1 College was directed to issue the hall ticket to the petitioner provisionally.

3. We have heard the learned counsel for the parties at length. We have also gone through the contents of the petition, reply affidavits and the Government resolutions. Mr. Sunil Dighe, learned counsel appearing for the petitioner, submitted that the letter of cancellation dated 19th September, 2005 issued by Respondent No.1-Institute is contrary to the norms prescribed by the All India Council for Technical Education ("AICTE") and also contrary to the directions given by the Apex Court in *Islamic Education*. In the submission of the learned counsel, the eligibility criteria prescribed by the AICTE is 10 + 2 for the entry level to the Four Year Degree Engineering Course and, therefore, the petitioner is eligible to be admitted to the Four year Degree Course of Engineering recognised by AICTE. By inviting our attention to the order of the Apex Court, it was submitted that the Apex Court has specifically permitted the Colleges to fill up the remaining vacant seats on the basis of merit marks obtained in 10 + 2 examination. This is particularly in view of the fact that if the admission of the petitioner is cancelled, the seat would become vacant.

4. An affidavit in reply is filed by Sai Venkateswarlu Kolla, Assistant Director (Tech.), Directorate of Technical Education, on behalf of respondent Nos. 5 and 6. Paragraphs 3 and 4 of the said affidavit in reply are relevant and are reproduced as under.

> "4. I say that the petitioner's reliance on the Government Resolution dated 16th March, 2005 is misfounded. I say that the said resolution is a corrigendum to the earlier Government Resolution dated 17th January, 2005. I say that by the said resolution dated 16th March, 2005, the eligibility criteria of securing minimum 50% marks for open category (45% for backward class candidates from Maharashtra State only) in the HSC (Std. XII) examination (PCM) has been reinstated and the relaxation is only in respect of marks obtained in the CET.
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> 4. I say that the issue pertaining to the admission to the Engineering Colleges was again raised before the Hon'ble Supreme Court of India in I.A. Nos. 90 and 96 in Writ Petition (Civil) No. 350 of 1993 and the Hon'ble Supreme Court by order dated 23rd September, 2005 specifically directed as follows:-
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> (1) It would be open to the State Governments to send the list of candidates seeking admission in engineering courses, who may have taken C.E.T. Conducted by the State Governments/entrance test conducted by consortium

colleges and have not got admission. The said list shall be sent to the engineering colleges within one week from the State Governments being notified about the orders passed by this Court. This order shall be notified by the applicant to the State Governments forthwith, but, in any case, not later than seventy two hours. If any State Government has fixed higher standards, the same shall have to be complied with before granting admission.

(2) In case the names, as mentioned in clause (1) are received, the Colleges would give admission to those students in the first instance.

(3) All remaining vacant seats are permitted to be filled up on the basis of merit marks obtained in 10 + 2 examination conducted by the C.B. S.E. Or other Boards.

The aforesaid directions are for the present academic year i.e. 2005-2006."

5. In the instant case, since the petitioner has secured 41.6% (125/300) marks in PCM in HSC Examination, which is less than 45% marks i.e. 135 marks out of 300 marks for backward class category candidates from Maharashtra in PCM, he cannot claim eligibility for securing admission in the first Year of the Four Year Degree Course of Engineering. The order passed by the Apex Court is required to be considered in the light of the facts and circumstances under which the

relief was sought. The circumstances under which an application before the Apex Court was filed are clear when no student who had taken Common Entrance Test (CET) conducted by the respective State Governments was available for admission in the Engineering Colleges and, therefore, the number of seats were lying vacant. Under the circumstances, the applicants therein wanted permission to fill up the vacancies on the basis of merit marks obtained in 10 + 2 examination conducted by the Central Board of Secondary Education (CBSE) or other equivalent examination conducted by the State Government and who were otherwise eligible and qualified except that they have not taken C.E.T. conducted by the respective State Governments .

6. Under the aforesaid circumstances, the Apex Court was pleased to issue directions. All the three conditions jointly stipulate and not in isolations. Even the order of the Apex Court as well as the circulars issued by the State Government on the eligibility condition for CET, including the corrigendum issued thereafter are clear. It is too much to say that the candidates on the basis of obtaining passing marks are eligible to get admission in the Engineering Courses. We, therefore see no merit in any of the submissions advanced before us. We, therefore, see no substance in the petition. The petition is

accordingly dismissed.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.